

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RICHARD THOMPSON and
RONALD JORDAN,

Plaintiffs,

v.

Case No. 2:04-cv-204
HON. ROBERT HOLMES BELL

PATRICIA CARUSO,

Defendant.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from the petitioner. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made.

The Magistrate Judge recommended that defendant was entitled to qualified immunity from liability. Plaintiffs filed objections asserting that the recommendation is contrary to *Allah v. Brown*, 351 F. Supp. 2d 278 (D. NJ. 2004). As in this case, the court in *Allah* concluded that it was improper to open mail outside the presence of a prisoner. However, plaintiffs have completely misrepresented the court's holding in that case. The court granted defendants qualified immunity from liability by holding that no prior clearly established law prohibited a court from opening

prisoner mail outside the inmate's presence in the wake of the anthrax mail terrorist events. Similarly, defendant is entitled to qualified immunity.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

The court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the court grants defendants' motion for summary judgment, the court discerns no good-faith basis for an appeal. Should the plaintiff appeal this decision, the court will assess the \$255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$255 appellate filing fee in one lump sum.

Date: September 7, 2005 /s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE